RIGHTS AND DUTIES

OF THE

UNITED STATES RELATIVE TO SLAVERY

UNDER THE LAWS OF WAR.

4

1861.

THE WAR POWER OVER SLAVERY.

PART I.

POWER OVER SLAVES AS PERSONS.

CONTRABAND is derived from *contrabando*, a Spanish word, formed of contra, *against*, and bando, a *proclamation or law*. In a general sense, it means all goods imported or exported contrary to law. This is the contraband *of commerce*, and depends upon the regulations of each particular nation within its territorial jurisdiction.

Contraband *of war* comprehends such articles only as are used directly, and sometimes those which may be used indirectly, in carrying on war. Of the first class are arms, munitions, soldiers' uniforms, horses, ships of war, etc.; of the second are saltpetre, chemicals for making fulminating powders, and, under some circumstances, provisions, money, ship-timber, naval stores, and, in general, any articles destined for the military or naval use of an enemy, though susceptible of other uses.

These a nation at war may prevent neutrals from carrying to its enemies; and, if neutrals are caught in making such conveyance, they may be punished, either personally or by the confiscation of the hostile goods, together with the vessels or vehicles employed in their transportation.

This sort of restraint upon commerce with enemies is applicable to neutrals alone, and depends wholly on the law of nations. An enemy has a right to supply himself with all kinds of commodities in war as in peace; and the adverse

party has an equal right to seize, if he can, and confiscate them, not as contraband of war, but as the property of an enemy. In the present case, it would also be the property of traitors, waging an unprovoked and unprincipled war against their unoffending and too patient fellow-citizens, against their oaths of allegiance, and against the Constitution and laws they have concurred in establishing.

There is but one other party who can convey any thing to these enemies, and that is a citizen of our own. By the laws of war, *all traffic, contract, intercourse or correspondence between the enemies of a country and its citizens or subjects, is strictly forbidden.* Hence all property of theirs, destined or in process to be transferred to the enemy, or property of the enemy destined to be transferred to our own citizens, is liable to capture and confiscation, not as contraband of war, but as enemy's property.

Such presumptuous and sordid citizens, besides suffering such forfeiture, remain amenable to the laws of their country for treason or misdemeanor, according to the nature and aggravation of the case.

All commerce between belligerent parties being thus prohibited, and all goods, wares and merchandize passing, or destined to pass, to and fro between them, liable to seizure and confiscation, contraband of war, which implies that goods not coming under that description are *free*, can have no distinct existence, but is merged by the common law of nations in the general contraband of commerce.

For these reasons, *there can be no contraband of war between belligerents*, and it is immaterial whether the war be foreign or domestic. It follows that slaves cannot be taken under that title.

Is there any right arising from the state of war, by which, without violation of the Constitution or laws, we may capture or receive, employ or free them?

Slaves must be considered either as persons or property. Mr. Madison, in "The Federalist," maintains that they are both. On their personality, he justifies the provision of the Constitution giving, on their account, to their masters, a heavy additional representation in the national legislature and executive. Upon their chattelism is based the provision for hunting them like partridges, and requiring the people of

the Free States, not to abstain like poor Englishmen from poaching, but to bag the game, and send it back to the lordly owner, when it flies from his warren!

The Constitution affects to deal with slaves as persons only. But it gives Congress the "power to regulate commerce with foreign nations, between the several States, and with the Indian tribes."

In exercising this power in behalf of the victims of the foreign slave trade, as Congress did the first moment that the Constitution untied their hands, they encountered no constitutional difficulty in treating them as a subject of *commerce*. No other idea appears to have been entertained or suggested on that occasion. But when the question of the power of Congress to prohibit the slave trade "between the several States" came before our Supreme Court, ("*supreme* in mischief,") it was discovered by that learned tribunal, that slaves being *named* in the Constitution as persons, cannot be considered, in a legal sense, as property, but as persons only; and inasmuch as persons cannot be a subject of *commerce*, they decreed that Congress have no authority to prohibit the *American* slave trade! They forgot, or did not pause to reflect, that under this construction, Congress could not have touched the foreign slave trade; and that our treaties with Great Britain for its suppression, and our fleets on the coast of Africa, would all be unconstitutional! Because the term "foreign nations" is annexed to *the same enabling words* as the term "several States." How the South would have yelled, if such an absurd and monstrous inconsequence had been committed *against* any interest of hers, or in favor of any interest of the *North!*

It would be with an ill grace that slaveholders and producers should object to viewing slaves as "persons," having under that title long enjoyed with entire impunity the lucrative luxury of slave-breeding, and in sequence, a vast domestice slave trade. And if they do object, it is of little consequence, for I do not in this discussion make it a paramount object to please and propitiate them, as would seem to be the case with many of the public servants, entrusted with the administration of the government and the conduct of the war.

As "persons," slaves stand in the same relation to an

enemy conquering and occupying the country of their residence, as their masters do. Here is a principle of the laws of war, perfectly settled and unquestioned: *Conquerors have the right, to the extent of their conquests, to establish such government and laws as they see fit, subject to the "higher law" alone.* It is true that they usually permit the civil laws of the vanquished to remain in force; and they do so remain as a matter of course, until expressly altered or abolished by the new sovereign. From this rule, however, is necessarily excepted that portion of the territory which is in the actual occupation, and the area of the operations, of the victorious army. There, martial law invariably supersedes all constitutional and municipal law, so far as concerns the treatment of the vanquished. Indeed, distinguished jurists have suggested that martial law is as much a part of the common law as the law merchant, or parliamentary. But, however it may be considered in this respect, its scope is confined to the hostile and the vanquished; except in the case of enemies and emissaries in our bosom, in which Congress, if it deems it necessary, may suspend the privilege of the *habeas corpus*, and thus give to the authorities, both civil and military, the power of restraining, at their discretion, all disloyal, dangerous or suspected persons.

In all the conquered territory, the orders and proclamations of the commanding generals, or of the sovereign power which they serve, are, for the time being, the supreme law; and, by the direction of that power, or with its approval, the commanders of armies may prescribe such changes, and initiate such reforms and measures of every kind, as they deem best for the satisfaction, security and indemnification of the conquering nation, for the interests of justice, peace and liberty, and for the general welfare of all concerned. They may dissolve the system of society which they find, and substitute any other which they deem more conducive to the improvement and happiness of the vanquished, and the peace and safety of the conquering nation.

Thus the British nation, of which we were a part in the war with the Pretender in 1745, totally abolished "the patriarchal constitution of the Highlands."* There was much

*Hume.

that was painful, and some things unnecessarily harsh, in this radical and enforced reformation; yet the most enlightened statesmen and purest philanthropists of Scotland, as well as England and America, have recognized the great rebellion of the *Chevalier, to restore his dynasty to the throne*, as a providential dispensation, inasmuch as it afforded the United Kingdom a favorable opportunity, and the most effective means, of eliminating from its polity an incongruous and dangerous element.

The castles of the rebels were sacked and burned, cattle, provisions and other moveable property carried off, the inhabitants disarmed or pursued, and sternly shot down; the hereditary jurisdictions, services, customs and even costumes of the clans, abolished; the traitor chiefs convicted, attainted and executed to the number of eighty or ninety for high treason, and the territory parcelled out in small leasehold estates to loyal, industrious, and skilful cultivators. It was not even allowed to be sold, lest the rebel families should recover possession by purchase, through third persons. The thoroughness and impartiality of the overthrow are evinced by the fact, that Lady Mackintosh, on a charge of treason, was subjected to imprisonment, and her moveable property carried off, although she was not brought to trial, and notwithstanding that *her husband was actually in the service of the government*. Of course, this was the use of the war power.

In 1797, Napoleon I., having beaten and neutralized the King of Sardinia, conquered Lombardy, and broken and driven from Italy the powerful armies of Austria, was occupied in pursuing the remnants, and pushing his conquests toward Vienna, when the usurping oligarchy of Venice, called a Republic, but in reality one of the foulest and cruelest despotisms that ever oppressed a nation or disgraced human nature, broke the peace with France, and stirred up insurrections in his rear. Thereupon he turned suddenly upon that accursed and effete aristocracy of assassins, and at one swoop swept them out. He substituted a democratic Republic for the ancient sham. This was the war power, and so far from being deemed a mistake or a reproach, it has always been considered lawful, just and beneficent, and celebrated among the honorable and redeeming traits of the great but too ambitious warrior and statesman who did it. In crushing

these insurrections, he thought it necessary to resort to military executions, as some of our Southern commanders did in the "war of pretexts," against poor inoffensive Mexico!

In 1829–30, the French conquered a piratical and slave State, for centuries the scourge and opprobrium of the Christian nations of Europe and America, who, through the terror of its audacity and ferocity, had for centuries tolerated and even subsidized the blood and slave-hunting conspiracy against the human race. Its area was just equal to the island of Great Britain. Its chivalrous conquerors annihilated the government, dissolved the State, expunging its laws and social forms, its piracy and slavery, and substituting a polity to which the vanquished were strangers, and against which they entertained a mortal antipathy. One slap, dealt by the Dey of Algiers in the face of a French consul, moved a mighty and Christian people to wipe out, under the laws of war, that detestable and too long endured "*barbarism.*" What would not that victorious army have done, if they had had our cue to fight and exterminate? if not only their ministers of peace had been threatened with outrage and chased ignominiously away, but also thousands of their peaceable and unoffending fellow-citizens, travelling and sojourning under the sacred guaranty of oaths and compacts, had been horribly lacerated with whips, plundered, mutilated, hung by the neck, hung by the heels, to die slowly by torture, which tortures the imagination; coffined alive and then cast into the sea, or tarred and then lit like a candle — for no offence except that they were *Frenchmen*, and would not consent to commit treason, and join in parricidal war against their country? It was the most damning crime of Nero, that he crucified Christians with their heads downward, and daubed them over with combustibles to burn alive as lights in the night!

In the Revolutionary war, the British received some thousands of fugitives from Southern bondage, and never gave up one of them. With these refugees, they peopled Sierra Leone, and, in part, the island of *Trinidad.* The descendants of those forlorn creatures, victims of a brutalizing system, are now the owners of about half the shipping and other property of that opulent island. Similar improvement and success have attended the settlement of Sierra Leone.

It is often cited as an illustrious example of an [illegible] peace, that the Roman victors imposed upon the Carthaginians, as a *sine qua non*, that they should abstain in future from human sacrifices to their God — *Moloch*.

From the foregoing principles and examples it results, that war and conquest — supposing always the cause to be just — confer upon the conquerors the right of making, in proportion as they advance, any change they deem conducive to the good of society, in the political and social state and relations of their vanquished enemies; that they may level up and level down, castes, orders and degrees; annihilate constitutions and governments, establish democratic Republics in lieu of Oligarchies, enfranchise the enslaved, and abolish inhuman customs. And it follows, further, that when the victorious armies withdraw, or while they remain in possession, the sovereign nation whom they serve may abolish, alter, ordain and establish laws for any and all purposes, which to them seem good, subject to the laws of God alone.

For it would be the height of iniquity and absurdity for a country, forced by cruel, wicked and unprovoked aggressions to sacrifice tens of thousands of the lives of its sons, and hundreds of millions of their hard-earned treasure, to confer at once, and without probation, upon subdued traitors, all the political and personal liberties, immunities and privileges of brave, loyal and untainted citizens; thus capacitating them either to renew their treason and hostilities, or to thwart, by sharing and abusing those liberties and privileges, all wholesome and necessary measures of prudent restraint, and *perhaps* of rehabilitation.

The Constitution of the United States imposes no necessity for such imbecility, absurdity and injustice. It does not extend *proprio vigore* over a conquered territory. That is an arch-heresy, which has too long survived its inventor, J. C. Calhoun, but cannot, it is believed, long survive its most distinguished advocate, the late Mr. Douglas.

But whatever may betide in this respect, the slave, once freed by the war power, will be free for ever.

Not only has our government a right to employ slaves, captured or escaped, in building fortifications, to enlist them in our armies, or let them go free under their protection, *but it is their positive duty to them and the country*, and they

will be guilty of a high misdemeanor for which impeachment will lie for every case of neglect or refusal so to do. Suppose they should attempt to return a white refugee, who has had the good luck to escape hanging, burning or burying alive, and to reach Fortress Monroe, or the left bank of the Potomac, or the city of New York—would any judge hesitate to issue a writ of *habeas corpus*, and this too with indignation at so daring and heartless a violation of law and justice, and to discharge the intended victim? The case of every black or brown refugee from the enemy is the same in law, and vastly more urgent in fact. *He* would go back to assured and inhuman torture or death.

PART II.

POWER OVER SLAVES AS PROPERTY.

Col. Henry Lee, of the Revolutionary Army, afterwards General and Governor of Virginia, was annoyed during much of his life by the importunity of creditors and the pursuit of bailiffs. He was a most gallant officer, and a genial and hospitable gentleman; but, like most Southerners, not overscrupulous in *keeping contracts and paying debts.* He was ingenious and skilful in the art and stratagems of war, and once entrapped and cut to pieces a body of four hundred and fifty Carolina Tories by sending their leader an order, in the name of Col. Tarlton, to meet him at a rendezvous. Lee was a favorite of Washington, and presumed so far upon his friendship and indulgence as to sell, as his own, eleven hundred acres of wood and timber land belonging to the General, passing a formal title and taking the money. After a while, a rumor of this "raise" reached the Father of his Country, and he interrogated the adventurous Colonel on the subject. The latter replied that he "wanted money badly, and as it was a wild out-o'-the-way lot, he supposed his General would n't want it." To which Washington rejoined, "Pehaps not; but I have one request to make of you, and that is, that you will not sell Mount Vernon."

This distinguished soldier and author, father of General Lee, now commanding in chief the Virginia insurgents, procured a lodge to be built for him on the Maryland and Virginia line, with a room in each State, so that from whichever the officers of the law came, he could take sanctuary in the other!

To the slave-breeders and drivers, the slave-duality dodge has been as convenient as his dual lodge to Harry Lee.

Having in the first part of this discussion locked up, *for the present*, one of the rooms, I now propose to lock the other.

To the end of augmenting their ability to abuse their wretched bondmen and women, regulate and fleece industrious and opulent States, and maintain a gigantic monopoly of slave-manufacturing and trading, protected by us with the death-penalty, our late masters have no longer, under this government, any occasion to count their slaves as "persons." Now they would doubtless renounce "with alacrity" that wonderful constitutional privilege, so prolific of power and profit in times past. But this shift cannot save their human *chattels*, any more than the Constitution—whose protection, with their accustomed modesty, they invoke at the gates of our fortresses and the pickets of our camps, after repudiating all its obligations, and trampling and spitting upon its banner—can save either their chattels or themselves from being grasped and moulded by the hand of war.

By the laws of war, the victors in a just cause may seize, appropriate to the uses of the war, carry off, confiscate, distribute or destroy every species of property, public or private, belonging to their enemies. The Rules and Articles, established by Congress for the government of our armies, recognize this principle in all its breadth; for while they guard by swift military penalties, in addition to the ordinary civil ones, the property of our own citizens, they make no provision for the protection of the property of our enemies, evidently intending to leave the latter to the law of nations, the exigencies of the service, and the integrity and discretion of those employed therein.

It is certainly and fortunately true, that private property is usually respected, but that strict law permits its seizure at the discretion of the conquerors, is a position which cannot be successfully controverted.

This right, though available at discretion, is not to be abused. It cannot be used, except by *privateers*, to sate private avarice, and mere lust of plunder. The just and impregnable grounds of all seizures of enemies' property, are the crippling of their resources of every sort, replenishing and sustaining our own, promoting the success, securing the objects, and expediting the conclusion of the war. Thus all captured property is to be faithfully applied, or carefully preserved, for the service of the conquering nation.

These restrictions, prescribed by the laws of war, and based on equity, humanity and good conscience, relieve the strict right and discretionary power of taking enemies' property from the invincible repugnance which every just and generous mind must feel to the unlimited and indiscriminate plunder even of the most unjust and odious aggressors.

"The conqueror has a right to seize on all the property of the enemy that comes within his power, and it matters not whether it be moveable or immoveable. These seizures may be made—1, In order to obtain what he demands as due, or an equivalent; 2, To defray the expenses of the war; 3, To force the enemy to an equitable peace; 4, To deter, or, by reducing his strength, hinder him from repeating, in future, the injuries *which have been the cause of the war*. And with this last object in view, a power at war has a right to destroy the property and possessions of the enemy for the express purpose of doing him mischief."—*Martens' Law of Nations*, pp. 287–8.

The above is a summary of the principal rules applicable to this point, as they have been established by the highest authorities on the law of nations.

By what right did our Sixth seize the arms of the secessionists and assassins of Baltimore? These were private property, in a private warehouse. The justification is that they belonged to enemies and traitors. By what right did Ellsworth take the flag, or a regiment its camping ground, in Virginia? By what right does our army raise an entrenchment there, or even win a field of battle, if that be its fortune? By what right are we seizing scores of vessels and boats in the Chesapeake and Potomac, and hundreds of barrels of flour in mills and on freight trains, and the very trains and railroads? These are all private property. There can be but one answer — the right in war of stripping, weakening and vanquishing the enemy, supplying and strengthen-

ing ourselves, and winning the palm of victory and the blessings of peace. By that same right, the chained chattel was taken from the Alexandria slave-pen and destroyed, — i. e., *converted into a man*, protected and employed by the Michigan regiment. He is now performing important service to his benefactors and to the people of the United States; while to a certain, though not the same extent, the loss of a commodity, capable of making an ash-cake, dressing and roasting a pig, and brandishing a pickaxe, shovel or firelock, impairs the efficiency and amount of the forces and means of enemies and traitors. Suppose it had been a roasting-jack or washing machine in the Marshall House, and our men needed those articles; could they by the laws of war take them, and be forbidden by the same laws to take a thinking, locomotive, laughing, sympathizing, thankful article, containing in itself those machines, and many more? Or is it an insuperable objection to the exercise of an ordinary and undoubted right, that thereby we shall incidentally do "the will of God," and make the *Magna Charta* of our fathers a reality? "All men are created equal, and endowed by their Creator with certain inalienable rights, among which is Liberty."

"God wills man free,
Man wills him slave;
I will as God wills;
God's will be done."

"Why do *ye also* transgress the commandment of God by your tradition?" Are you fools, or stricken with madness, or incurable poverty of spirit? Or are you the slaves of custom, or emasculated minions of the late slave oligarchy? If these be the fruits of free schools, I, for one, go with the redoubtable Pryor, against them and the whole "free list."

"We have got to hating every thing with the prefix *free*. Free farms, free labor, free society, free will, free thinking, free children, free schools, all belong to the same brood of damnable *isms*. But the worst of all these abominations is the modern system of free schools." — *Richmond Examiner*, 1856.

The capture and possession of the property of enemies taken on land, divests the owner of his right, and vests it in the conquering nation; and it is immaterial whether it be captured or voluntarily surrendered.

If there be any who admit these principles, and yet deny that we have a right to seize, or receive, when voluntarily surrendered, those *moveables*, "which have been the cause of the war," and whose capture, reception and conversion into men are, not merely direct and efficient, but perhaps the only sure means of success in the war, and, at any rate, of speedy and permanent peace—they utter an absurdity too self-evident to require any other refutation than its statement.

What! has property in human blood and bones—the right to exact work without wages, to sell and tear from kindred, home and country, to torture the body to death and brutalize the soul—grown so sacred in this enlightened age and Christian nation, that it is to be exempted from the rules and incidents to which every other species of property is subject, and favored with a national republican policy of insurance? Call it republican, if you please, but it will in reality be a little more than democratic; it will be diabolical.

What! did Washington, Lafayette, Mifflin, Minge, John Randolph, the Fitzhughs of Maryland and Virginia, the Clays and Thomes of Kentucky, the Rev. Drs. Nelson and Brisbane, James G. Birney, Cornelia Barbour, Angelina and Sarah Grimke, John G. Palfrey, John G. Fee, Mattie Griffith, George Washington P. Custis, and thousands more, who, for the love of God and man, and the good of their own souls, renounced the baleful possession, and divested themselves, and those dearest them, of legal inheritances, only commit a fantastic and self-denying act of folly, or of incredible hypocrisy and disinterested robbery? They proclaimed, by the most solemn transactions that pertain to life and death, that there *is* a difference between this and other property—not sanctifying and blessing, but infecting and dooming it, and blighting all around it!

There are other principles of the law of nations, which lead to the same result of arming the injured belligerent with discretionary power over the persons and property of the aggressors. A war begun and waged without just cause, from selfish, rapacious, ambitious, envious and malicious motives, and for unjustifiable ends, authorizes the aggrieved party to inflict at discretion, upon its authors and supporters, such penalties as the nature and aggravation of the offence may require.

"It is implied in every *social compact*, that those who violate it shall be reduced to submission, and even put to death, if that be necessary to secure society against new disturbances, and the sacrifice of new victims. Otherwise, human society could not exist."—*Isambert. Historical View of Public Law and the Law of Nations*, p. 248.

"If a nation allows foreigners to enter its territory, it is bound to respect their rights, so long as they conduct themselves peaceably; and if, in breach of good faith, it proceed to punish them vindictively, when they have committed no offence, it is justly responsible for its conduct to the nation to which they belong."—*Judge Story, Enc. Am., vol. 9, p.* 145.

"Whether the State or its subjects be the offending party, if the State refuse to make satisfaction, the property of each of its subjects, coming within the reach of the injured State, is liable to seizure; and even the persons of such subjects may be seized, but the life of an innocent person cannot be taken, unless in extraordinary cases, where there is no other means of obtaining the satisfaction due, and of preventing future violations."—*Martens*, p. 268.

"Murder, or unnecessary personal violence, of any kind, committed upon enemies by a people at war, justifies and requires retaliation, either upon prisoners of war, or indiscriminately upon any individuals of the guilty nation."—*Grotius.*

Murder or personal outrage is greatly aggravated, when, to the title of stranger, which should be sufficient, is superadded that of fellow-citizen travelling or tarrying for health, friendship, commercial intercourse, or local business, to which he has been invited under the guaranty of contract or pledges of hospitality, a claim which the wildest aborigines and Arabs hold sacred. In this case, not only are public faith and national comity confided in, but also private honor, mutual oaths, and a common allegiance. Yet what scores, what thousands of our brethren and sisters, trusting to these and to conscious rectitude, have been meanly and basely defrauded and robbed, barbarously tortured, and, with horrid refinements of cruelty, murdered, by dastard and ferocious multitudes, because—

> "Unshaken, unsubdued, unterrified,
> Their loyalty they kept, their love, their zeal,
> Though single."

Vattel is of opinion that there are cases in which a belligerent has a right to destroy an unjust and ferocious nation, like the Barbary States, for example.

These must of course be extreme cases, defying all ordinary means of establishing justice and peace.

The repeated insurrections to restore the Stuart dynasty, having always their chief incentive and aliment in "the patriarchal system of the Highlands," brought the British nation at last to the solemn conviction that the interest and safety of domestic peace and good government necessitated the extirpation of that "barbarism." Therefore they ravaged with fire and sword several thousand square miles of the insurgent territory, and put to death many thousand traitors and rebels in the field of battle, on the block and gibbet, and by shooting them down like wild beasts, as the Southern rebels often do their slaves for no other offence than the desire of liberty.

The punishment of the obstinate and sanguinary insurgents of the Vendee was still more memorable; and illustrates more strikingly the power with which the conquerors are armed in a just and unavoidable war. Yet the guilt of the Vendeans was far inferior to that of the American traitors. Their position was precisely that of Kentucky,—resistance to the orders of the nation to turn out their contingent of men for the army. Kentucky has not resisted with arms, for the very satisfactory reason that the government has subsided in face of her threats, and let her alone!

The United States have often laid waste Indian corn-fields and villages, driving off their horses and cattle, and not unfrequently slaughtering the inhabitants. This very year, we pay more than three millions from the national treasury for the performance of such service in Oregon. And the brave and humane Gen. Wool, who sought to stay it as unnecessary, unjust and mercenary on the part of the Oregonians, appears to have been discredited by the late administration on that account. That his tried valor, skill and great experience have not been called into the active service of the country in this crisis, is matter of surprise and regret.

Gen. Jackson hung and butchered prisoners of war, Indian chiefs, women, and British subjects, because he considered their offence in making war on the United States as meriting it; and his acts received the sanction of the government and people.

In 1854, Gen. Harney massacred one hundred and fifty men, women and children, at the instigation of Jefferson Davis, upon a false charge of committing hostilities against

the United States by stealing—not mints, sub-treasuries, ships and arsenals, but a poor stray and lame Mormon cow!

Virginia reduced prisoners to slavery in her wars with the noble natives of her happy clime, generous, hospitable and forbearing as they had been to the riotous, rash, and bloody wretches, who effected the first landings and settlement on the soil of the Old Dominion. And she recorded her sense of the guilt of *those* "barbarians" in rising in arms against *her*, by statutes offering premiums for their scalps, and awarding, as slaves to her soldiers, all the Indian captives they might make.

PART III.

NO MILITARY POWER TO RETURN SLAVES.

By what authority do the officers of the United States army assume to send back fugitive slaves, and to compel, under the fearful penalty of disobedience of orders, the brave and high-minded men under their command to become slave-catchers and the keepers of the slave-pens, to which they every now and then convert their camps at the bidding of some fragment of the late slave-oligarchy?

The Fugitive Slave Act has ceased to exist for traitors and rebels. They have renounced the Constitution and the laws, are levying war against them, and against the nation which ordained, and its government which administers them. Protection and allegiance are correlative. The denial of one cancels the obligation of the other.

But if the Fugitive Slave Act were still in full force, it would not apply to a fugitive slave *within* the same State where he made escape, nor within the *District* of Columbia. "Persons held to service or labor in one *State*, escaping into *another*," is the language of the Constitution. Those are the only persons who come within the scope of the Act, except, of course, all men and women of the Free States, of whom it makes slave-hounds and sluts.

It is a principle of all municipal laws, that any party may refuse and renounce a law passed for their special behoof. The South has renounced and disavowed the fugitive enactment with all the rest, and only asks that which is the first desire of all criminals, "to be let alone."

To cap the climax of absurdity and iniquity, there is in our camps, forts and ships of war, no tribunal, provided by the Act, to try a man for his liberty; no proofs prescribed by it are adduced; in a word, none of its forms for the arrest, detention, trial or surrender of the person claimed, is, or can be, in those places, observed; nor does any authority, created by the act, grant a certificate for "his taking off."

It is by the war power, and by that alone, that these discreditable, rather, these devilish, deeds have been done.

For half a century, upon the plea that our hands were tied by the Constitution of our fathers, we have warmly repelled the reproaches, heaped upon us by the world, for shouting liberty with our lips, and cherishing slavery in our bosom; yet no sooner are our hands freed from the bonds of the slaveholders, and this by their own malignant and murderous assaults upon the nation, than we apply ourselves with new vigor and a more devoted subserviency to do their dirty and fiendish work! "What trick, what device, what starting-hole canst thou now find out, to hide thee from this open and apparent shame?"

The foundation of the summary and terrible code of arms, is the unavoidable necessity and duty of prosecuting a just war with success, of executing justice upon wicked and bloody tyrants and aggressors; extinguishing the cause or causes which enkindle their hostility, and procuring the speediest return of peace, compatible with the accomplishment of these objects. The return to enemies and traitors of their fugitive slaves is in impious and fatal antagonism to every one of these objects of the war, and consequently in self-evident violation of its laws. It is using the war power to protract and aggravate the horrors of war. It is to spare its guilty authors, multiply its innocent victims, and confirm and perpetuate its cause. It is an inexpiable crime against the poor and oppressed, and an immeasurable wrong and injury to the people, who have, under God, the highest

moral and legal title to the services of the sympathizing and well affected of the whole nation. He who inhumanly and in violation of law rejects the offer to the Republic of devoted service, and thrusts the devoter back to wicked torments and into the ranks and trenches of the traitors, whence he may never escape more, commits manifold moral treason, to say the very least of it. If he be a military officer, acting under orders, he should disobey them; for by the Rules and Articles established by Congress for the government of the army, no officer or soldier is bound to obey an unlawful order. If he acts on his own responsibility, and with a design of "giving intelligence" and "aid" to the enemies of the United States, he ought to suffer death. If he err from mere force of habit and tradition, like the Scythian slaves, who after beating their masters in a succession of combats with the sword, submitted trembling and terror-stricken, when their masters flung down the sword and drew their *whips*, he should be erased from the army rolls, as a cripple. If he be a cabinet or other high civil officer, directing or counselling the rendition of a slave by the military arm, he should be removed by the President, or impeached and cast out by Congress. A few stern and vigorous examples would teach our foes and friends too, together with the whole nest of pernicious spies, prostitutes, and traitors in the metropolis, that it is not a cheap and trivial affair to attempt the life of a nation!

There is no principle or rule of war which authorizes us to treat slaves, flying to us from traitors and rebels, in any other manner than we would white deserters and refugees from their armies and hangmen, their lynch law and prison-houses.

I might rest this point on natural right, on the power of civilized and Christian warriors to unmake slaves, whom heathen and barbarous wars originally made; and, above all, upon the total absence of any adverse principle or authority. But I will not do so. English and American history furnish positive and practical support to the position.

Two days after the preliminary treaty of independence and peace between the United States and Great Britain had been agreed by Franklin, John Adams, and Jay, on the part of the United States, Henry Laurens, of South Carolina, ap-

pointed with them to conduct the negotiation, arrived at Paris, and insisted upon the insertion of an additional article, stipulating that "no slaves or other property" should be carried off by the British army at the evacuation of the posts in their occupation. The demand was admitted by the British Commissioners, and the treaty, so modified, signed November 30, 1782.

A large number of slaves, who had taken refuge with the enemy's forces, or been captured by them, and not yet removed, were claimed by Washington under the above-mentioned article. But Sir Guy Carleton, commander-in-chief of the evacuating army, rejected the claim, maintaining that his prisoners and protegés were not embraced in the stipulation. He undoubtedly regarded them as freemen and British subjects from the moment of their capture or reception, and so not touched by the treaty; and he took good care to secure their safety by sending them away in the first embarkation some months prior to Evacuation Day. Honor to the memory of the brave and faithful veteran! He consented to leave a list of these persons, to the end that those claiming to be their owners might try their luck, in an application to his government, for compensation. Of course they failed not to make fierce reclamations. The question remained unsettled till 1794, when, by Jay's treaty, the claim was formally relinquished. This was one great cause of the Southern rage against the treaty and the negotiator.[1]

In the last war with Great Britain, 1812–15, no protracted incursions were made into Southern territory, and few descents on the slave coast, yet a large number of slaves escaped to the British camps and ships of war. They were so stupid as to run away from "happiness" to "misery," from "kind masters" to "Cochrane the pirate." These persons were all treated and disposed of conformably to the precedent established by Carleton; but the British government, contrary to its course in that case, consented to make compensation for them.

In 1836, Gen. Jessup, commanding in the Florida war, made, with the approval of Cass, Secretary of War, an alliance with the Creek nation, by which, on certain conditions, they were to furnish from six hundred to a thousand Indian warriors to serve during the war. One of the conditions

was, that they should have "all the plunder they might make from the Seminoles." By that it was understood, that they were to have and to hold as slaves all the negroes they might capture. This was a revival of the most ancient barbarism, but quite in keeping with the general character of the contest. The Creeks captured about one hundred men, women and children. These persons having been brought, after a long imprisonment and various vicissitudes, within the military department of Gen. Gaines, were protected by him as prisoners of war, and sent off, in the style of Sir Guy Carleton, in company with their friends and allies, the Seminoles, to the West. Mr. Giddings, in his "Exiles of Florida," has given an exciting and humiliating narrative of infinite chicaneries practised by the Executive, the War Department and Indian Bureau to effect the enslavement of those unoffending people. In contemplating the dreadful moral and physical desolation which marked that wretched marauding of the slave democracy for innocent blood and merchantable bones, it is inexpressibly grateful to listen to the wholesome voice of one honest and energetic man; and to witness the triumph of an earnest and timely utterance in behalf of justice, liberty and humanity.

Mr. Giddings, in one of his late letters, sums up the arguments of Gen. Gaines as follows: —

"He asserted that in time of war all slaves are belligerents as much as their masters. The slave men cultivate the earth and supply provisions. The women cook the food, nurse the wounded and sick, and contribute to the maintenance of war, often more than the same number of males. The slave children equally contribute whatever they are able to support the war.

"He could enter into no judicial examination of the claim of one man to the bones and muscles of another as property. As a military officer, maintaining the Federal Government by force of arms, he could not know what the laws of Florida were. He could be guided only by the laws of war, and the laws of any State must yield to the safety of the Federal Government." — *Doc. House of Representatives, 2d Session, 25th Congress, No.* 225.

Under color of a sale by the Creek captors to an American dealer in human flesh, an attempt was made by civil process to wrest his prisoners from the possession and jurisdiction of the General. He appeared at the bar, and vindicated his authority and the rights of the prisoners, citing in support of

both the well-settled laws and usages of war. In conclusion, he said:—

"I have not yet learned, while acting in my official capacity on oath, to take the responsibility of doing that which is repugnant to law, unjust and iniquitous, as I verily believe any favor shown to this claim would be."

In 1838, Gen. Taylor, having succeeded Jessup in the chief command, but not in unscrupulousness and subserviency to slaveholders and hunters, refused to deliver to them his negro prisoners, demanded by a crowd of Florida claimants as fugitive slaves. He told them he had no prisoners but "prisoners of war." They insisted upon seeing them. He replied that "no man should examine his prisoners for such a purpose," and he ordered them to quit his camp.

The world has adjudged it a crime and a blunder in Bonaparte, that he did not, at the commencement of the Russian campaign, emancipate, re-nationalize and arm the Poles. But he was seduced and entangled by his fatal Austrian alliance, just as Great Britain was in the war of the Revolution, by her tenderness of the supposed interests and deference to the wishes of the great and numerous slaveholding Tories of the Carolinas.

A delusion from which even the truest and most thoughtful are scarcely exempt prevails in respect to local limitations of the war power. That power, like the Constitution, acts upon persons without necessary reference to State lines. As the civil jurisdiction of the United States extends to all citizens and residents in peace, so in this civil war, the military is capable of reaching all rebels, wherever they may be. Congress has declared and the President has proclaimed no war against State nor section. A gang of conspirators have defied the laws, seized the muniments and sought the life of the nation. War thus evoked aims its weapons at the conspirators and parricides, their aiders and abettors, wherever they may be found, the same in Missouri as in South Carolina or Eastern Virginia, and the same in Western Virginia and Maryland as in either.

True, there may be no need of marching or mustering an army at every point where traitors may confederate and make war upon their country, either directly or by giving

aid and comfort to the slave confederacy. But whether such need exist, is a question for the superior civil and military authorities of the nation. It is for them, in the exercise of a sound discretion, to determine where there are traitors and enemies sufficiently formidable by their numbers, or by the secret complicity of local authorities, for the hand of war to smite. Wherever that may be, within the boundaries of the Union, or on the wide ocean, there may they, and must they, if faithful to the duties with which they are charged by this people, so prodigal of their blood and treasure, strike. And the seat or seats of war thus determined, do by necessary implication fall under the dominion of martial law; and all persons and property, within the sphere of the operations of armies, must be subject to the rules and exigencies of war. As far as circumstances admit, it is best, perhaps, in practice, to blend by common consent the action of the civil and military powers, leaving to the former the exercise of all ordinary magisterial and administrative functions, which do not impinge upon the sterner, and, for the time being, more necessary and vital activities of the armed.

By the Constitution, property of every description, belonging to any citizen or resident of the United States, may be taken for public use, "just compensation" being made therefor. This is also a war power, and was exercised by both parties in the Revolutionary War, each giving compensation to their friends, and stripping those whom they respectively regarded as enemies.

Thus I have shown: —

1. That we have at present an unquestionable legal right to receive or capture slaves to any extent within and from the territory of the enemy; and to receive those fleeing from traitors and enemies everywhere, whether they be considered as persons or property.

2. That we may employ, enlist or discharge them, paying them fairly in the two first cases, and rendering them in the last such protection and aid as we would any loyal white deserter or refugee citizen, escaping to us from the hands of our enemies.

3. That there is no power conferred by law, municipal or international, upon our armies to deliver them up, nor to arrest, detain nor use them, except with their consent and at an equitable remuneration.

4. That it has been in violation of law, as well as of their duty to God and their country, that our military and naval officers, seamen and soldiers, have surrendered and sent them back; that in every such case, a grave offence has been committed, for which obedience to orders affords no justification, inasmuch as all orders to that effect, from whatever source, are unlawful.

5. That no power exists to arrest by the military arm, or return a fugitive slave to *any* claimant, however loyal he may profess or prove himself to be.

6. That the Government has a clear right, either directly or by the leaders of its armies, to call the slaves from service on the side of those attempting the life of the Republic, to the side of those defending it.

As *property*, they may be taken—1, to weaken our enemies, strengthen ourselves, and hasten the achievement of a beneficial and permanent peace; 2, as "a removal of the cause of the war," and the only possible preventive of future wars—whether we form one or more powers—and of perpetual discord in a delusive peace; and 3, as a necessary punishment of crimes, habitual to Southern slaveholders as a body. Among these may be reckoned —

1. Thousands of cowardly and cruel personal outrages and murders of Northern citizens, "who have committed no offence."

2. Scores of felonious assaults in both Houses of Congress, culminating in an attempt to assassinate a Senator in his seat, a deed applauded, defended and memorized with a unanimity unusual even for the South; and all for the suppression of freedom of debate in the highest legislative and executive councils of the nation.

3. And with the same intent, fatal duels, frequent challenges to the duel, continual menaces of the duel, and deadly insults designed to provoke the duel or degrade him who refuses it; whereby the Senators and Representatives of the North have been placed, during the whole existence of the common government, in the insidious dilemma of violating law and moral principle, and incurring the general condemnation and aversion of their friends and neighbors at home; or of personal humiliation and fashionable ostracism at the seat of Government; or of compounding with both

by submitting to a corrupt despotism, with its pistol in one hand and bribe in the other, abandoning rights, duty and self-respect, and betraying constituents and country.

4. Desecration of the ballot-box, the sceptre of the sovereign people, and committing some hundreds of brutal murders, together with rapes, and sacking and burning of towns and dwellings in Kansas, for the extension of slavery.

5. Texas acquired by filibustering, and in sequence a cowardly and rapacious war, "unconstitutionally begun" and unmercifully prosecuted against weak, unoffending, suffering and distracted Mexico,—both transactions involving the guilt of myriads of murders, and both for the extension of slavery.

6. Other filibusterings in Lower California, Northern Mexico, Cuba and Central America, and therewith some ten thousand other murders, for the extension of slavery.

7. Punic faith in violating a compact of peace of their own proposing, and enviously destroying great interests of their own creating.

8. The systematic violation of letters and printed correspondence for nearly thirty years, at the pleasure of every Inquisitor postmaster or his familiars, throughout the entire South.

9. Proscription of honest and capable men, and the bestowment of official honors and emoluments upon the incompetent and corrupt, until the honors had become null and the emoluments the rewards of prize-fighters at elections—the pay of mercenaries, enlisted to extend slavery and maintain the baleful predominance of the Slave Power; whereby the exercise of the most vital function of the government, the dispensations of that earthly providence, called federal patronage, had long degenerated into a mean and base barter between sectional jealousy, ambition and rapacity on the one part, and individual greed on the other—an unexampled and frightful system of bribery and corruption—in effect, a new slave trade, wherein "white slaves" have been bought and sold in the District of Columbia, and the interior of the White House, as regularly as black ones outside of it.

10. Burning wretched bondmen at the stake, sometimes by

sentence of the law and often by mobs, without a single effort, public or private, to efface this horror of the age.

11. Sacrificing, annually, by over-driving and under-feeding, by cruel and unusual punishments, and by sudden and mortal violence, more thousands of human victims to Mammon, than were offered up by the Carthagenians, from a higher motive, to their Moloch.

12. Violating, by unheard-of rules of parliamentary proceeding, imposed in defiance of natural and divine law, of the guarantees of the Constitution, and of all the venerated charters of English and American liberties, the sacred and fundamental rights of petition and debate, with no relaxation during ten years, except for the insulting admission of memorials from Slave States for the annexation of Texas; and crowning these strange and persistent outrages by an attempt, under the charge of treason, to expel John Quincy Adams for presenting a respectful petition, praying that Congress would "adopt measures for the peaceable dissolution of the Union"; although he had moved, in the same breath, that the petition be referred with instructions to report in favor of its rejection, with the reasons thereof.[2]

13. Systematic and incessant rapine, fraud, corruption and cruelty practised upon the unfortunate natives of our country, by Southern States, citizens and federal agents,—selected mostly from the South,—and by Administrations, wielding in the interest of the slaveholders, and in obedience to their behests, the whole power of the Republic—treasury, army and militia of rapacious borderers, greedy of federal pay, greedy of Indian "beauty and booty," greedy of pickings and stealings from the commissariat and quartermaster's department; and repeatedly provoking wars of extermination against those simple and upright peoples by disguising themselves as Indians, murdering whole families of their white neighbors, and then summoning, in well-feigned terror, the ready ruffians of the frontier and the nearest garrisons of the army to the harvest of death.[3]

14. Enacting and executing, in palpable and virtually admitted violation of the Constitution, State laws for the seizure and enslavement of citizens of Free States, coming within the limits of Slave States on their lawful business; persisting for forty years in this flagitious villany, in the face of a

judicial decision against the validity of those laws by a national court, composed of Southern judges; expelling, with ignominious threats and demonstrations of personal violence, under the direction of Preston S. Brooks, representing the Governor of South Carolina, the envoy of a Free State, deputed to test in an amicable manner, in their own courts, and finally, if necessary, in the highest of the nation, the constitutionality of those inhuman enactments; and consummating this unparalleled audacity and defiance of all law, divine and human, by ordaining that it shall be felony, punishable by imprisonment in the penitentiary, for a minister of peace to come within the borders of South Carolina on such mission of justice and humanity again!

15. Corrupting and subverting, by fraud and force, the vital prerogative of the elective franchise, and thereby foisting into the highest dignity in the Republic, and, as we have proudly boasted, "the highest upon earth," two false and usurping, to the exclusion of two legally elected Presidents. And because fraud and violence, striking at the ballot-box, could no longer serve their purpose of ruling the nation, they have resorted to treason and rebellion to ruin it.[4]

16. Reviving slave-trading piracy, and inaugurating Jeff. Davis piracy.

17. Conspiring and raising civil war for the destruction of their country, because they are no longer permitted to pervert its power, corrupt its morals, and disgrace its name.

As *persons*, all the slaves are "within our reach" by means of that undying love of personal liberty which glows in every human bosom. To their quickened sense, the dead silence of despotism only makes of the South a whispering gallery. The smallest mutter, from Cabinet or camp, of liberty to them, reaches with electric speed around the vast dome, and may summon at a moment myriads to our side, making of them rapturous defenders of the Union, instead of forced assistants of its bloody assailants.

PART IV.

ASPECT OF THE QUESTION.

It has been asked—Why seek to explode Butler's doctrine of "contraband of war," when you yourself cannot but rejoice in the result of its application, inasmuch as it has been the means of rescuing a goodly number of human beings from wicked thraldom? Conceding that every friend of justice, liberty and humanity must feel a satisfaction in the immediate and apparent result, I am still constrained to reply:—

1. That the assumption of Gen. Butler is totally unfounded and false.

2. That the doctrine, besides being false, would be narrow and impracticable if it were true; narrow, because it applies to property only, and does not recognize men and women as persons; impracticable, because the seizure or reception and possession of property as contraband does not divest the owner of his right, and transfer it to the possessor. The right remains in the original proprietor until the property has been condemned by a court of prize, duly advertised for sale at public auction, sold accordingly, and the proceeds paid into court; and then, after deducting the costs of court, paid over to the treasurer or other proper officer of the United States. Thus the human chattel would remain a chattel, with only a change of masters, the cities and towns of Free States would be converted into slave marts, and the United States into a regular slave-trader!

Mr. Cameron, in reply to Butler's first letter in May last, directs him "to employ the fugitives, keep an exact account of the labor by them performed, and the expense of their maintenance." He evidently understands that the property is not changed by the mere possession of the captor or receiver, but must await subsequent proceedings. He evidently means that the fugitives are still held as slaves, subject to the claim of their rebel masters, and that in some contingency they may be restored to their possession; for there is no instruction to give them any compensation for their labor, or the promise of any. Thus they have been working diligent-

ly and very effectively, it is said, many of them for months, without the comfort and encouragement of wages. It is plain that their wages is reserved for settling day with those amiable people, who have been robbing their servants all their lives, and in order that they may continue to do it with an immunity from the reproofs of just men, are now striving to destroy the nation. With prodigious assurance, they demand that we send back their slaves to help them do this thing!

This poor legal figment of contraband of war — in addition to its utter barrenness of ultimate benefit to the cause of justice and freedom, and its standing in the way of a plain and sensible rule of war, whereby the right of the owner is divested and transferred by mere capture or reception and possession of the slave, either as person or property — has been working incalculable mischief to the highest interests of the country, and to the confidence of the people in the prudence and vigilance of their rulers.

The express prohibition of commerce with the enemy in the few specific articles of contraband of war, amounts to a general license to sell and convey to him every thing else! Thus some weeks after the capture of Fort Sumter, and some months after the seizure and capture of our forts, arsenals, custom-houses, mints, sub-treasuries, and thousands of officers and soldiers of the United States regular army, we find our commander at Cairo agreeing with the Tennessee traitors to let all freight, "shipped by or through Cairo, pass safely, except it were for arming and equipping the enemies of the United States." And as if this were not shocking and monstrous enough, the further gratuity was demanded and granted, that "boxes shipped by or through Cairo should not be subjected to an examination of their contents by being opened, unless information should have been previously received that they contained arms and munitions of war destined for enemies." The condition was obviously futile, for whether such information were received would depend upon the caution and secrecy of the enemy!

The negotiator of this nice arrangement with Col. Prentiss was that sly old fox, Milton Brown, of Jackson, Tenn., the mover, in the House of Representatives, of a *treaty* by *legislation* — the principal Whig coadjutor of John Tyler in circumventing his own constitutional power, and the *two-*

thirds vote of the Senate—a degenerate son of Ohio, fully verifying the old Christian proverb, that "one renegade is worse than ten Turks."

It is true that by the loud protest of the people, finding themselves sold, this grand Cairo dodge was pretty soon stopped, and the Mississippi shut up; yet the same stupid and suicidal system of supplying our enemies with subsistence for their armies, and lending them strength to sever our jugular veins, was continued through other channels; through the Cumberland and Tennessee rivers; by Paducah in Kentucky, and by heavy trains of wagons from Kentucky through the Cumberland Gap.

Four months ago, (May 20,) it was announced from Washington, that "measures would be taken to stop the indirect shipment of provisions, which had been going on through Paducah and other points since the direct (by Cairo) had been stopped." Nevertheless, upon the occupation of Paducah, a few days ago, by the Illinois and Missouri regiments, to the infinite disgust of Gov. Magoffin, we had this comfortable announcement:—"Sept. 7. The freight books of the depot show shipments to the South of from one to five car loads of flour, and as many of bacon, every day for sixty days previous to its occupation by the Federal troops. Provisions of the value of $20,000 were seized at the depot." At this rate, probably not less than one thousand carloads passed through that depot between the closing of the Mississippi and the occupation of Paducah, which connects by railroad with Memphis, and by cross railroads from thence with the rebel armies in Virginia.

But the mightiest stream of provisions and whiskey has been and still is running by the Louisville and Nashville Railroad. Again and again it has been rung in the ears of fathers and mothers, brothers, sisters and lovers, who are sending off those

> "Dear as the ruddy drops
> That visit their sad hearts,"

and pouring out their treasures like water, to cripple the resources and subdue the spirit of this most ungodly rebellion—that "hundreds," nay, "thousands" of carloads to replenish those resources and keep up that spirit, were passing

by that route through Kentucky, and thence on by the great Tennessee and Virginia Railroad straight to Richmond and Manassas! Both these Kentucky railways, from Paducah and from Louisville, extend by connections to New Orleans, Mobile and Pensacola; and it is a well-attested fact, that the army occupying the latter place have been fed, with the exception of the fish they catch, on Northern provisions, and have kept their courage up during the dull and hopeless beleaguer of Fort Pickens "with excellent endeavor of drinking good, and good store" of Cincinnati whiskey. Over and above the immense business of victualling the enemy done by the foregoing agencies, are the cargoes of the steamers, plying constantly on the two great rivers which pierce Kentucky and Tennessee, and run, by means of the connecting railroads, through all rebeldom.

The supplies which freight those endless cars and steamboats are drawn mainly from our great West! An inferior portion is derived from Kentucky.

If we consider that the planting States have always relied, to a great extent, even in time of peace, on those productive sources for the sustenance of their families and slaves, the serious importance and imperious necessity of the continuance of them, now that the South has great armies in the field, and hundreds of thousands of producers have been converted into mere consumers, will be self-evident.

This is the state of facts on which a few venal and traitorous individuals of the brave West, sellers of their country, and dealers in the blood of their fellow-citizens, have been and are still, more or less operating. It is a state of facts in which the law of contraband would prohibit the conveyance of provisions to the enemy, if it were attempted by neutrals, instead of licensing it when done by our own citizens!

It is further self-evident, that the absurd, perhaps self-delusive, and, either way, contemptible position of Kentucky, has been more deleterious to our cause, and is costing more lives of its heroic and self-consecrated defenders, than the combined efforts of any five seceding and openly hostile States! Yet the leading Union and compromise journal in that State, edited by "a Northern man with Southern principles," threatens those whom he is pleased to call "the ultra North" with the revolt of Kentucky, and her adhesion

to the enemies of liberty and the Union! This is genuine slave-driving arrogance and bluster. Be our plain answer this: Having survived the friendship of Kentucky, we will endeavor to weather her enmity, which cannot be worse, and we think would be a great deal better.

If we correctly understand the forecasting and proposed accounting of the Secretary of War, he is making the United States the agent and factor of slave-trading pirates and enemies, with whom, by the laws of war, and the President's proclamation of August 16th, neither he nor any member of the government, any more than a simple citizen, can lawfully have any contract, intercourse or correspondence, unless it be to treat of peace, the exchange of prisoners, the care of the wounded, the abandonment of barbarian practices in the conduct of the war, reprisals for atrocities perpetrated upon Northern and Union men, and other analogous subjects.

The fugitives held by us can only be restored by one of two methods; either by the United States voluntarily relinquishing its claim, or by decree of a prize court, determining the property not to be condemnable as contraband of war, which any decent court would certainly do.

The first method must be the one which Mr. Cameron contemplates, for no man in his position would ever think of proceeding to adjudication on such a claim in any court inside of Christendom. If such be the intention, it follows that our government is still under the sorcery of the Delilah of compromise, and will continue to be shorn of its strength, and to be the sport and derision of its foes; for only by compromise with traitors can such restoration take place. To make it under any other circumstances would be to incur mortal guilt.

By the Rules and Articles of War, enacted in 1806, "*Whoever* shall be convicted of holding correspondence with, or giving intelligence to the enemy, either directly or indirectly, shall suffer death;" and by a law of 1790, "If any person, owing allegiance to the United States, shall levy war against them, or shall adhere to their enemies, giving them aid and comfort within the United States or elsewhere, and shall be thereof convicted, shall be adjudged guilty of treason against the United States, and shall suffer death."

It was decided by the Supreme Court of the United States,

in its golden days, that the words "owing allegiance" are immaterial, and that "not only the persons who bear arms, but those who assist otherwise, are included among those levying war." Every slave, therefore, who performs a part in the drama of the war on the side of the rebellious faction, is a traitor, and *slaves might well be warned by proclamation, not to incur the penalty of treason by aiding and abetting the treason of their masters!* Of course, slaves can contract no guilt when, in taking such part, they yield to overruling force, and act under duress; but though they do thus act, the mischief may be the same as if they levied war against the United States with the hearty concurrence of the will.

He, therefore, who from our side sends a man into the ranks or trenches of the traitors, or a woman into the kitchen or laundry of a rebel regiment, or either of them into the potato, corn, rice, tobacco, cotton or cane fields to raise provisions for their armies, or bags and hogsheads of merchandize to fill the parricides' loan, is a traitor. If one should enlist men in the North, or in Canada, and send them South for any of those purposes, or knowing that their services or labor would be applied to any of those purposes, there would be no doubt of the highly criminal nature of the transaction, and no hesitation in arresting and arraigning him for treason; because he could in no way levy war against the United States more effectively. It was decided by the same Court, in the same case, [4 Cr. 470,] that a recruiting officer, sending men to the ranks of traitors, commits treason, though he never go to a camp, fort or field.

What mode of "corresponding with and giving intelligence to the enemy" can be more direct and certain than sending back a fugitive slave, who has seen our forces, forts and lines of fortification? We have received, and are almost daily receiving, useful information, little as we have profited by it, and little as we have merited it, from fugitive slaves. As our armies advance under competent leaders—if that is to be—into the enemy's territory, their topographical knowledge and guidance will be of inestimable value. Already, in repeated instances, the lives of our officers and soldiers have been saved by vigilant and patriotic women of Frank Pierce's "subject race." Subject! just as if he himself,

when he uttered, from the Presidential seat, that apostate and undemocratic phrase, was not the abject subject of the meanest and most ferocious despotism on the face of the earth which it contaminates! Those great-hearted women, at the risk of their lives, have again and again warned our men of ambuscades, which otherwise would have been fatal. The refugee slave sent back to torments, sure to be increased by his escape and his efforts to be loyal, will have the strongest motive to propitiate the tyrant, who holds his life or death in his hand, by imparting, though his whole heart be with us, all the information in his power against us!

Not a single fugitive has thus far been set free, or obtained an assurance of ultimate freedom. A great number, how many none can tell, have been thrust back, against law and without mercy, to chains and traitors; from Fort Pickens by Lieut. Slemmer, to die under tortures as a terrible example; from Fortress Monroe by Col. Dimick; from the steamer Quaker City; from the camps and columns of Gov. Sprague and Col. Burnside of Rhode Island; of Col. Jones, Col. Cowdin and Gen. Banks of Massachusetts; Gen. Patterson, of Pennsylvania, himself a slaveholder, and strongly suspected of Secessionism; and many more.

While our armies have thus been violating law and humanity, and in effect aiding and abetting traitors and enemies, citizens of Free States in the service of the United States, endeavoring to take on board the steamer *Star of the West* some of the troops betrayed by the black traitor *Twiggs*, and afterwards captured in their unarmed state, contrary to capitulation, and their safeguard violated, by the blacker traitor, *Van Dorn*, — were seized by the rebels, and sold at public auction as slaves! These unhappy men — unhappy, I fear, are all who trust this government for protection, except Secessionists and spies — were marched off by their purchasers to life-long servitude in the interior, nobody can tell where, and nobody thus far seems to care! That no circumstance of aggravation and national insult might be wanting, they were carried a thousand miles from Indianola to Montgomery, that they might be put upon the block, and knocked off under the nose of Jeff. Davis! Has that fellow been warned, by any word or deed of our government, of the consequences which such fiendish acts must draw upon him

and his confederate kidnappers and flesh-jobbers? Not a bit of it! These living martyrs of liberty, more to be commiserated than those among the dead, have not obtained from the government even so slight a token of recognition and sympathy as an official notice of their fate, or a public record of their names!

Twice has our country engaged in foreign wars for the single object of punishing this stupendous crime of reducing its citizens to slavery. In 1803, under Commodore Preble, and in 1815, under Decatur, before Tripoli and Algiers, we redeemed our countrymen at the cannon's mouth from captivity, *barbarian* in name and nature, but far less inhuman than that to which these traitors have doomed the citizens and servants of the United States, within the last three months, on our own shores!

So far from discerning any sign of a determination to redeem, as the government should do at any cost or sacrifice, the victims of this high-handed villany, or to deter, by a just and necessary retaliation from a repetition of it, we have seen new enormities of the same kind committed in Florida and Louisiana. Meantime, the venomous reptiles, who sting us thus, are threatening, with high and swollen crest, to enslave two Yankees for every fugitive slave whom we shall sell to Cuba, in addition to the 250 whom they feign that we have already sold thither! Thus do they invent calumnies to excuse the crimes they have committed, and new ones which they meditate.

I have entire confidence in the integrity, sagacity and good intentions of the President, but I wait with deep solicitude for proofs of decision, firmness, promptitude and vigor, corresponding to the exigencies of this great crisis in the nation's life. That this intellectual, high-spirited, industrious, opulent and powerful people will demand and speedily and at any price will have, a more comprehensive, searching, cleansing, trenchant, swift and formidable conduct and sway of its unequalled moral and material forces, and a more complete executive mastery of the magnificent situation, is as certain as that Hercules had a club, and did not always grapple the thievish, brutal and bloody enemies of mankind with naked hands. "He cut his club for himself in the woods of Nemea."

I was one of the most anxious for the election of Mr. Lincoln; and by suggesting every considerate and reasonable allowance for the treacherous dismantlings and extraordinary difficulties and embarrassments contrived for him by his mean and worthless predecessor, I have striven earnestly to repress an impatience for aggressive action against so malignant an enemy, already making open war upon us before Mr. Lincoln's accession; and another impatience, more pronounced, for the thorough expurgation of spies and Secessionists from the Executive Departments, and traitors from the city of Washington. But, now, every true friend of the administration or of the country has begun, however reluctantly, to feel that time and the prodigious popular movement, now in its sixth month, have rendered that defence as worthless as James Buchanan. Some time ago, this impatience found a little vent through the press in referring to the sudden dismemberment of a British Cabinet at the bidding of the people of England, grown impatient and half frantic at the national disgrace and virtual murders resulting from their neglect, blundering and imbecility, in the beginning of the Crimean war—a war of remote and slight concern, compared with ours for national existence. A curt and pretty severe reply was flashed back from Washington, to the effect that such allusion betrayed a pitiable ignorance of the great difference of organic structure between the Executives of this Republic and of that Monarchy. Shall we take tamely this rebuff of red-tape, and subside in awful silence before it?

Few of us are unfamiliar with that difference. We have had sorrowful and mortifying occasions to consider it; and I, for one, venture now, through this unshackled and unshackling press, to declare, that the sooner the feature of the British system, whereby the administration of it is rendered *flexible* to the will of the nation, and the tools at all times transferable from feeble, impure or unskilful hands, to those which are trusty and able to use them, the better it will be for our safety, honor and prosperity, and the perpetuity of all that is dear and valuable in our noble institutions.

Things have changed since our Constitution was formed. We have had experience, and we have had trials and humiliations. We have lost some prejudices and learned

some new truths. We have ceased, most of us, to mix in one hash—

"The Pope, the Turks,
The King, the Devil, and all their works,"

and we have painfully learned, that, in its most important executive feature, our Constitution is a failure, and executive responsibility to the law, a myth.

When John Tyler was negotiating with filibusters for dismembering and robbing Mexico, pledging to them the protection of our army and navy against the efforts of the Mexican government to destroy or whip them from its borders, and,—that scheme being defeated by the exercise of the treaty-making power of the Senate,—was intriguing to bring in Texas by circumventing the treaty-making power of the Senate; when Franklin Pierce was backing the Border Ruffians in their murders, rapes and arsons, with the aid, and whenever they got into trouble and danger, with the protection of the Federal troops; and when James Buchanan was found to have been playing into the hands of traitors the greatest stake in the land or the world—I urged, in each case, upon some of our most faithful members of Congress, that these men should be impeached by the House, and brought to trial at the bar of the Senate. The unvarying answer was: "It would be useless. The effect, if any, would be to confirm their malversations, and lend them the appearance of a legal sanction." One gentleman said: "As well impeach Satan before his 'Synod of infernal Gods,' Moloch, Belial, Beelzebub, Mammon and the rest."

Chancellor Kent, having been consulted in respect to Tyler, replied that his course had been unconstitutional, unprincipled, "would lead to the ruin of the Union," and that he ought to be impeached. Yet Tyler's sins were white as snow, compared with the crimson dye of Buchanan's and Pierce's.

It may be safely assumed, as an established result of the working of the Constitution, that the Republican executive, ordained for us by the fathers, is practically as irresponsible and inviolable as the sovereign of Great Britain. A vicious President can do but little harm, if majorities of both houses are against him; and if both or either is for him, it will al-

ways be impossible to impeach and punish him, and consequently to make good his constitutional responsibility.

The error of the Constitution consists in not providing a tribunal, removed as far as possible from the political arena, instead of the Senate, to try impeachments.

We, therefore, need, and if we love our country or ourselves, we shall have, some new political arrangement to remedy this capital defect.

The English have for ages recognized and accepted the law and the fact of the entire irresponsibility of their sovereign. "The king can do no wrong." But they have never left themselves for a moment in the helpless condition in which it has long been obvious that we are lying.

The British ministers are held responsible for executive offences; and the ordinary method of enforcing this responsibility is by driving them from office, either by voting down the measures they propose, or by a direct declaration of "want of confidence."

This is the point of difference between the British and American Constitutions, to which the rescript from Washington, in reproof of the distant muttering of the press, referred.

Seeing, therefore, that our actual position on this subject is precisely that of Great Britain, why should we not adopt her eminently democratic custom, and pack off a cabinet, or part of a cabinet, whenever dissatisfaction with their principles, conduct or measures has become general, or "want of confidence" has been unmistakably pronounced? If our American Secretaries value office more than they do the approbation of their countrymen, and the welfare of their country — for, surely, they are powerless for good, who have lost or never possessed the public confidence — so much the worse, and the President ought to remove them forthwith. If he refuse, Congress should withhold from him the means of exercising his office and carrying on the government. It is scarcely conceivable that a continued disagreement and a dead lock should ever ensue.

That our government has freed no slave, but has prevented many from passing to freedom, and is treating as slaves all the fugitives who have escaped to them, is evident, not only from their being worked without wages,

payable to *them*, but also from their being confined to our camps and fortifications, or to the jail of the District of Columbia, in which, according to accounts, many have been languishing. When the Massachusetts Third and Fourth Regiments—their term of service having expired—were about to leave Fortress Monroe, taking with them some of the servants to whom they had become attached and wished to employ, they were peremptorily forbidden by Gen. Butler. Fourteen of their favorites were wrested by superior authority from the Ellsworth Zouaves, under similar circumstances, within that ancient and famous slave-pen, the District of Columbia. Since that occurrence, the Provost Marshal of the District has issued orders, interdicting the departure of any refugee slave for the *North;* while, on the other hand, Gen. McDowell has forbid them to go with the army *South*—a superfluous proceeding, so long as he was in command of the army.

After such an accumulation of merits on our part toward the traitors in arms, would it not be a wise and delicate overture of conciliation and compromise, if Gen. Scott were to write a letter, by a flag of truce, to the chief of the traitors, enumerating and acknowledging the little amiabilities practised on their side toward us; toward our seamen of the Star of the West; toward our defenceless prisoners and wounded heroes, butchered on the field of battle; toward our Northern citizens, tarred and burned alive at Pensacola and other places, and hung everywhere, because they refused to take arms against their country; toward Southern Unionists, continually hung and shot all over rebeldom for the same cause! And when these and other flowers of chivalry shall have been gathered for the traitors into one huge nosegay of overpowering sweetness, tell them that "for these courtesies we will lend" them our soldiers to pen and guard their slaves, and a score or two of our regiments to put down their risings for freedom, if so dreadful a crime as *insurrection* should be committed by *them*, and their masters cannot conveniently quell it without weakening too much the grand army with which they propose to take Washington!

In his second letter, dated in July, ordering a change in the imprisonment of fugitive slaves from the Alexandria jail to our fortifications and camps, Mr. Cameron directs that

their labor be "paid for," not *paid*. Here is no freedom nor justice for the slave, only a change of masters.

In a third letter of "August, 1861," in reply to Butler's of July 30, the Secretary marches two steps forward. He directs that fugitives from loyal masters be no longer surrendered or sent back, but employed, and, as we must presume from former instructions, the same accounts kept as in the case of fugitives from traitors. This is, undoubtedly, of considerable importance, and if the intimation, that the loyal masters of fugitives thus received may expect compensation, should be sanctioned by Congress, this great class of slaves may be considered free as fast as they may please to leave their masters, and take refuge with the Union forces. This, it seems to me, is the plain and obvious construction of the Secretary's letter; and yet it is impossible to feel confident of it, in view of the fact that the writer and Gen. McClellan have since interposed to effect the restoration of fugitives to masters represented to be loyal! If this be so, the Secretary of War still hangs fire, and must be too infirm of purpose to admit of much reliance upon his declarations or acts.

No positive assurance of freedom to the enthralled can be found in any thing emanating from the government, except in the confiscation act, passed at the late session of Congress, and in Gen. Frémont's recent proclamation. The confiscation act is a virtual invitation to all slaves employed, or intended or permitted, or given or sold by their owners, to be employed, "in aiding, abetting or promoting insurrection or resistance to the laws," to flee and take refuge with us. Of course, such slaves can never be restored. The act also makes the same class liable to capture and confiscation as prize, and enjoins upon the President to cause them "to be seized, confiscated and condemned." This is interposing the same delays and embarrassments which must attend the operation of the contraband doctrine, but with the important difference, that the judicial process in the former will undoubtedly result in the enfranchisement of some slaves, but in the latter, of none.

The proclamation of Gen. *Frémont*, a name of good omen, declaring the slaves of all the rebels of Missouri, FREEMEN, is the first word touching the real cause and end of this war which has had the right ring. It abolishes instantly and ab-

solutely three fourths of the slavery of that State. I venture this assertion, not because there is an equal or any preponderance of the white population and wealth in favor of treason, but because a rebellion, begun and waged for extending and eternizing slavery, necessarily embraces in its coils a disproportionate number of the devotees of that basest and beastliest form of Mammon-worship; and because treason, like all other crimes, finds congenial nourishment in the rank pollutions of slavery.

The residuum of slavery in Missouri cannot abide long under the effects of this brave and broad sweep, but will be speedily carried into the vortex.

Nor will the effects be confined to one great State. The key-note is struck, which shall awake the grand symphony, and usher in the Year of Jubilee.

> "From harmony, from heavenly harmony,
> This universal frame began;
> From harmony to harmony,
> Through all the compass of the notes it ran,
> The diapason closing full in MAN."

Here this disquisition originally ended; but the President's countermand of Frémont's proclamation sinks the cheerful and hopeful tone of the conclusion into the minor mode.

For this, there must be great blame somewhere. A controversy taking such hold of stern conviction and sense of duty on one side, and savage passion on the other, admits not of safe trifling nor innocent vacillation. Let us, then, frankly endeavor to ascertain the cause of the disappointment, and the duty of true men and patriotic Americans in the premises.

Congress at its late session passed "an act to confiscate property used for insurrectionary purposes." After providing for the seizure and confiscation of all property so used, the act goes on to make special provision for the forfeiture of slave property, as follows: —

"Whenever hereafter, during the present insurrection against the United States, any person claimed to be held to service or labor under the law of any State, shall be required or permitted by the person to whom such service or labor is claimed to be due, to take up arms against the United States, or to work or be employed in or upon any fort, navy yard, dock, armory, ship, entrenchment, or in any

military or *naval* service whatever against the government and lawful authority of the United States, then the person to whom such service or labor is claimed to be due, shall forfeit his claim to such labor, any law of the State or of the United States to the contrary notwithstanding. And whenever thereafter the person claiming such service or labor shall seek to enforce the claim, it shall be a full and sufficient answer to such claim, that the person whose service or labor is claimed had been employed in hostile service against the United States, contrary to the provisions of this act."

The difference between the scope of this act and of Frémont's proclamation is, that to the number of slaves belonging to rebels, and declared by the former to be forfeited and free, the latter adds all other slaves belonging to rebels, however employed. This class would probably be to the former as ten or perhaps a hundred to one.

The act, therefore, greatly contracts that war power of the President, by which he might call to the service of the country all the slaves within the country, whether considered as persons or property, and whether belonging to traitors and enemies or to loyal citizens and friends; in the first case, as forfeited by treason and rebellion, and in the second, as liable to be taken, like any other private possession, for public use, just compensation being given therefor.

The repugnance which the government had shown to make use of the war power, except over law dear to free States, may be presumed to have been the cause which moved Congress to enjoin upon them the use of it to the extent which the act prescribes. With Congress, it was a question of the tenth of a loaf or none. They meant to put the President on the right track. The President infers that he can proceed upon it no further than he is allowed by the letter of the law; in other words, that he can set free no slaves, except they are employed in the "military or naval service" of the rebels. This is a correct legal interpretation, and so far as the civil law is concerned, he is bound by it. But he told us in his late message to Congress, that under the imperious necessity imposed upon him by treachery and civil war, he had been compelled to transcend the Constitution in order to save the country; and he enumerated as among the laws he had transgressed, those limiting the military and naval establishments of the United States, and the act of *habeas corpus*. True, he raises a question whether the Constitution does not confer upon the Executive the power to

suspend the latter in case of war or insurrection, but it is a suggestion, not a proposition, nor an argument.

The *habeas corpus* act has been called in England "the greatest thing in the Great Charter"; it is the primary cause why Inquisitions, Bastiles and Siberias have been impossible for Englishmen and for Anglo- (not *Angola*-) Saxons in America. It was the high-water mark of liberty in all the political storms of England, until the Puritans wrung from Charles I. the concession, that "an order from the King's majesty" should hold no man restrained of his liberty longer than *three days*, unless a judge or judges of the King's Bench or Common Pleas, on bringing the prisoner before them by writ of *habeas corpus*, should find that he was restrained of his liberty according to the law of the land.

The English Petition of Right of 1639, and Bill of Rights of 1689, prohibit the suspension of the privilege of the writ except by Parliament; and every State Constitution in the United States prohibits it, except by act of their Legislatures. Suspending is repealing for the time being. No power less than that which makes a law can repeal a law.

The reason why the Constitution of the United States contains no express declaration to that effect in relation to the *habeas corpus* is, that it did not occur to the framers of it that any body, in a land of liberty and law, would ever conceive that it could be otherwise![5]

This great safeguard of personal liberty the President has suspended on the Southern coast, at Baltimore, on all the route to Philadelphia and at New York. He did so on the plea of the necessity which treason and rebellion had created.

What was the situation of things in Missouri? The noble Lyon had laid down his life to hold in check an overwhelming force, which he had scarcely more hope of conquering than Leonidas the host of Xerxes. That force, and two or three more equal to it, in all 50,000 men, were converging toward the feebly guarded Federal posts, and loyal people upon the line and North of the Missouri. Add to this, traitors of more than Vandal destructiveness and ferocity lurked and secretly banded in the territory best affected to the cause of the Union. It was the mournful and almost universal conviction of the country, that Missouri, with all its loyal inhabitants, except, perhaps, St. Louis, was lost.

Is there not in this situation ample justification of the

General's use of the war power? There was no greater necessity for it at Key West, Washington, Baltimore, and on the route to Philadelphia. The President has the same right to use his power over the confiscation act that he has to ride on his war horse over any other law, and above all, over the sacred bulwark of personal liberty!

Gen. Frémont had exercised his right with moderation, under the circumstances. He might have called every slave in the State to his standard. Mr. Cameron's order of "August, 1861," removed the distinction between the slaves of loyal and disloyal masters, so far as fugitives are concerned. Frémont restricted himself to the slaves of that class, whom Congress by law, and the House by resolution, had marked to be stripped; though there is reason to believe that he might have gone further with the general and cordial concurrence of the loyal Missourians. It was not with them, but with Kentuckians, the President's countrymen, that the disastrous order, "dimming the shine" of the Pathfinder, originated. The *Louisville* (Ky.) *Journal* boasts of the achievement, and claims the honor for the Union men there!

I have sufficiently considered the false and fatal position of Kentucky, and in so doing, I have said, in substance, no more than the President himself did in his message to Congress. But Kentucky applauds her own "rotten policy," and in spite of it, she has been lauded by the lady of the President, a daughter of Kentucky. He himself is said to have stifly refused at first to sign "the Confiscation Bill," because "it would cost us Kentucky." If these nineteen States, which have saved the Constitution and the Capital, and will save *Liberty* and the Union, could have been heard at that moment, they would have said, in tones of thunder, "Then, sir, it will cost us nothing that we would not willingly part withal." Through her venerable and most influential citizen and otherwise, Kentucky strove to seduce and bully the Republican party into a degrading and delusive compromise. The pressure was fearful, and appalled for a time the stoutest hearts. Ever since that, she has been playing with a steam-power of ten thousand horses into the hands of malignant and murderous traitors. If slave-driving dictation can ever be tolerable to American freemen again, it cannot be so from Kentucky at present; and it is as unsafe as it is indecent for her to attempt it, or the government to listen to it.

NOTES.

Note 1. *Page* 20.

The following "Notice" is copied from a Richmond (Va.) paper of July 30, 1795 :—

"*Notice is hereby given,* that in case the treaty entered into by that d——d arch traitor, J——n J——y, with the *British tyrant* shall be ratified, a petition will be presented to the next General Assembly of Virginia, praying that the said State *may secede from the Union,* and be left under the government and protection of one hundred thousand free and independent Virginians."

Note 2. *Page* 26.

In the memorable contest, triumphantly sustained during thirteen days by one old man of seventy-five, against the solid Southern phalanx and their Northern allies, *Henry A. Wise*—the arch-traitor, now at the head of a rebel army, seeking the dissolution of the Union by treason, bloodshed and devastation—denounced Mr. Adams as "a black traitor," because he presented a petition for the peaceful and amicable dissolution of the Union! *R. M. T. Hunter*, of Virginia, the confederate Secretary of State, and *R. Barnwell Rhett*, of South Carolina, the ringleader of the revolt, who avows that he and his fellow-conspirators have been planning it for near thirty years, withdrew from the Committee on Foreign Relations, of which Mr. Adams was Chairman, because, they said, "recent occurrences (meaning the great victory of the 'old man eloquent') had induced them to doubt whether his removal by the Committee would meet the approbation of the House." *Thomas W. Gilmer*, ex-Governor of Virginia, and *William Cost Johnson*, of Maryland, mover of the celebrated XXI. Rule, were other members of the Committee, and withdrew on the same occasion. Johnson is said to have died in extreme degradation from intemperance, some three or four years ago. Gilmer was killed by the explosion of the *Peacemaker*, so called, on board of the war steamer Princeton, in 1844. *Tom Marshall*, of Kentucky, the author and leading advocate of the resolutions against Mr. Adams, less fortunate than Johnson, still survives both fame and character. They were all strong men, but not so strong as truth.

Note 3. *Page* 26.

An explanation is due for bringing this charge specially against slaveholders. The reasons are that theirs is the exclusive guilt and infamy of persecuting the Aborigines, as a persuasive to quit their ancient homes and accept banishment to strange lands. Theirs also is the peculiar guilt, failing this persuasive, of plucking them up, in violation of forty treaties, negotiated and ratified with them from the time of Washington down

to 1829, and forcibly planting them in new and remote regions. The purpose of this unjust and cruel policy was the extension of slavery over the fertile "Indian reservations," and the procurement of the most valuable lands at a low or nominal price. The pretext was that Indians cannot live in the limits of a civilized State.

Massachusetts, old and circumscribed as she is, and none too good in her treatment of Indians, has tribes of them, embracing considerable numbers, still living harmless and unharmed in her bosom, cultivating and enjoying extensive and valuable reservations, and managing their internal affairs in their own way.

It is a striking and characteristic fact, that the first and last very bloody and deeply disgraceful [illegible] of this State with the natives was caused by a drunken and dissolute captain and crew of a Virginia coaster. This man, named Stone, having been fined a hundred pounds and costs in Boston, and banished from the colony on pain of death, departed for home. His evil genius led him to deviate and enter the Connecticut river, where, coming in collision with the Pequots, a proud and powerful nation, he and his followers, seven in number, were slain.

The Massachusetts magistrates, seriously disquieted by the danger which all were supposed to incur by permitting the death of any white man by the hands of Indians to pass with impunity, undertook to treat as murder that which was probably nothing but an execution, justifiable by Indian law. But the allegations of the Pequots, though they were the only surviving witnesses of the occurrence, were pronounced "false pretenses." Hildreth [Hist. U. S. A., vol. 1, p. 238] says—"The Pequots insisted that the Virginians had been the aggressors, a thing in itself sufficiently probable." Palfrey [Hist. N. E., vol. 1, p. 457] says that the Pequots "protested that the affair was in part accidental and in part a revenge for ill treatment from Stone; the latter branch of which allegation was thought not unlikely to be true, as Stone had conducted himself ill in Massachusetts, and had gone away under sentence of banishment, with the threat of being put to death if he should return."

The slayers were demanded as murderers, but not given up. This was in 1634. The affair dragged on with mutual irritations and cumulative causes of animosity—the natural increase from the Virginia seed—until it ripened into the deadliest hate, and until war by firebrand and sword, unpitying and unsparing of sex or age, ensued. The entire nation, as noble, perhaps, as any of their brave and generous race, was swept from the face of the earth, apparently without a fair hearing. In history, they have not had, and cannot have, a fair hearing.

Of crimes committed by whites, disguised as Indians, I have heard and read more than thirty years. They have occurred at various points of the frontiers, Northern as well as Southern, though oftenest on the latter. It is but just to add, that our Indian system, Indian quarrels and Indian agencies have been managed exclusively by the Southerners and a few "Northern men with Southern principles," or rather, of no principle, for sixty years. The aim of their policy has been to make them feel that they are "a subject race," to break their spirit, humble their pride, debase their character, and appropriate their mines and lands.

The white fiend's game of enacting the murderer at the expense of the unhappy natives, has been played most frequently in Florida, where peace was often made only to be broken by the incredible depravity of men eager for kidnapping Seminole negroes, and for the restoration of the corrupt and wasteful expenditures of the War Department in that dismal region.

It is difficult to obtain positive testimony to the allegations in the text. From the nature of the case, the facts are known only to the culprits them-

selves. The following is an extract from a letter dated "Fort Myers, Fa., May 24, 1856, and published in the *Boston Telegraph* : —

"The *Tampa Peninsular* of this week contains a regular affidavit of a man or two, who got frightened, and confessed to Capt. Hooker, of the Florida Volunteers and others *,that they belonged to a regularly organized band of* WHITE MEN, *who disguise themselves as Indians*, and go about plundering and murdering through the country."

Note 4. *Page* 27.

The principle, on which the proof of this deadly outrage upon the Republic and upon the whole human family rests, is this : The number of voters in any community where the right of suffrage exists, bears a certain proportion to the whole population, the proportion being determined by the qualifications required for the enjoyment of the right. Where it is so far universal as to vest in every male citizen, who has arrived at twenty-one years of age, and is not a lunatic, idiot nor convict, the proportion is, *one voter* to about *four and a half* inhabitants. In the New England States, where, in addition to the requisites of age and sex, the payment of a tax within a certain period, and a previous residence within the election district for a certain term prior to the election, are prescribed — and where, by an exact and rigorous Registration of all qualified voters at an ample time before opening the polls, illegal and fraudulent voting is rendered well nigh impossible—the proportion varies from *five* to *six* inhabitants to every voter. In the Presidential election of 1844, very closely contested, the average in all the New England States was *one* voter to every *five* and *six-tenths* inhabitants.

In New York, where there was then no Registration, the proportion at the same election was *one* voter to every *four* and *five-tenths* inhabitants, including the free colored disfranchised ; in Pennsylvania, *one* to every *five*, including the same disfranchised ; in Georgia, *one* to *four* and *seven-tenths*, including the free colored non-voters.

In any long-established State, or where the generation of pioneers has grown aged or passed away, the number of voters under any American law can never in any given election district, exceed *one* to every *four* or *five* inhabitants.

In the memorable contest between Henry Clay and James K. Polk in the above-mentioned year, turning on the question of annexing Texas, it was proved, in the Judicial Courts of Louisiana, that steamboats were chartered by the partisans of Polk, took on board all the riff-raff that could be raked together, consisting of aliens, minors, convicts and vagabonds of every description, under the enticement of liquor and pay ; and then steamed up and down the Mississippi, landing their pestilent freights to vote at every hustings, which steam power enabled them to reach during the day of election. Witnesses testified on the stand that they voted for the Democratic candidate in two, three, or more counties, in that election, and that the crowds which they accompanied voted in like manner !

The case of *Plaquemines*, one of the river Counties — commonly called Parishes — of Louisiana, will illustrate the whole matter.

At the three State elections preceding the Presidential of 1844, and at the latter, the votes of that County stood as follows : —

	Whig.	Dem.	Total.
1841	40	250	290
1842	93	179	272
1843	36	310	346
1844	37	1007	1044

A gain of 698 votes, a little over 200 per cent., in one year! At that time, the whole white male population of that County was only 803, of whom, according to the census, 315 were minors, leaving only 408 who could by any possibility be legal voters, even if the qualification of twenty-one years of age had been the only one required; but it was not. The Constitution of that State requires one year's residence in the County, and the payment of a State tax within six months previous to election day.

It is a loathsome task to stir such mortal putrescence! *John Slidell* was the chief political engineer of that steamboat fleet, with its ladings of corruption and death — he that could not interfere to save the life of a fellow Senator, because he was not on speaking terms with him! he who is now an open traitor, and said to be destined by his confederates to proceed soon on an itinerant mission!

The illegal and fraudulent part of Mr. Polk's vote in the County of Plaquemines alone, say 650, fell but little short of his majority over Mr. Clay in the whole of Louisiana; and with less than *one-twelfth* as much fraud in one out of forty-three other Counties, would give him the six electoral votes of that State, where Henry Clay was absolutely adored.

> "An eagle, towering in his pride of place,
> Was by a mousing owl hawked at and killed."

New York, Pennsylvania and Georgia, all deemed doubtful States, and therefore fields fit for the fertilizer, corruption, presented, in the results of those districts, where the slave party was in a majority, and appointed the judges of elections, similar proofs of illegal and fraudulent voting. Having no Registration, and no check lists, slave-partisans and office-seekers admitted to the ballot whom they pleased.

It was discovered and demonstrated, upon the full official returns of the votes of those States, that in many of the districts above described, the vote was so swelled by the increased slave-democratic majorities, that the ratio of voters to population rose to *one* for about every *three* inhabitants! The facts may all be found in the New York *Tribune* of that day, and some of them in the *Whig Almanac* of 1845.

Polk's majorities in the States above mentioned were: —

New York,	5106,	in an	aggregate	of	535,882 votes.
Pennsylvania,	6332,	"	"	"	331,876 "
Georgia,	2147,	"	"	"	86,247 "
Louisiana,	693,	"	"	"	26,865 "

Mr. Buchanan was elected, or rather accomplished an usurpation, by a repetition of the same corruption, applied as before to doubtful States. Thus, in Illinois, Indiana and Pennsylvania, his majorities were won by notorious and audacious fraud and violence, brought to bear upon the ballot-box. One fact is decisive. It is known that he was lost without Pennsylvania; it is known that he carried the State by only 750 majority, and there were issued in and from the city of Philadelphia, 6000 false and forged naturalization papers, to make voters there and in Reading and other cities of the State.

Note 5. *Page* 43.

This was the war power, and considerable more. It was the war power extended beyond the area, just as Jackson extended it beyond the period, of war. The treatment of certain presses falls under the same remark.